

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )

NUMBER 63-35 (a17967) )

MEMORANDUM DECISION

Change Application Number 63-35 (a17967), in the name of USA Forest Service, was filed on April 8, 1994, to change the point of diversion, place of use, and nature of use of 19.2 acre-feet of water. Heretofore, the water has been diverted from Gooseberry Creek tributaries and stored in reservoirs located: (1) North 1416 feet and West 1749 feet; (2) North 167 feet and West 945 feet; (3) East 300 feet; (4) North 69 feet and East 1308 feet; (5) East 1540 feet; all from the S $\frac{1}{4}$  Corner of Section 25, T23S, R2E, SLB&M. The water has been released to the natural drainage and rediverted at a point South 100 feet and West 720 feet from the NE Corner of Section 36, T22S, R2E, SLB&M, and used for the supplemental irrigation of 30.00 acres in Section 18, T22S, R2E, SLB&M.

Hereafter, it is proposed to divert 19.2 acre-feet of water from Hamilton Spring, located South 1050 feet and East 2350 feet from the NW Corner of Section 34, T23S, R2E, SLB&M, and rediverted at the NW Corner of Section 35, T23S, R2E, SLB&M, to be used for a public recreational fishery in Farnsworth Reservoir in the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 35, T23S, R2E, SLB&M.

The application was advertised in The Richfield Reaper from April 27, 1994, to May 11, 1994, and was protested by Markay Johnson, Marian R. Von Taenel, E.A. Thorsen, Circleville Irrigation Company, Upper Sevier River Water Conservancy District, Fred Mortensen, Vernal J. Mortensen, Marion Paxton, Richard Cowley, Venna Johnson, Piute Reservoir and Irrigation Company, Gooseberry Irrigation Company, M'Recia Elfervig, Orderville Irrigation Company, DMADC, Marlene Crame, Burton Allred, Verle P. Peterson, Gooseberry Irrigation Company, and Phil H. Barney. Late protests were filed by Met Johnson, Peggy Mason, and Mr. and Mrs. Robert S. Jensen. A hearing was held on July 28, 1994, in Richfield, Utah.

Ted Fitzgerald, representing the applicant, reviewed the intent of this change application. He reviewed agreements made in 1987 between the Forest Service and Mr. Jorgensen regarding water in Hamilton Reservoir, Twin Ponds, Abes Reservoir and Cold Spring Reservoir. He stated that the water from these reservoirs was historically used to irrigated private land located in the northeast portion of the Gooseberry drainage and that return flow from these lands did not benefit other Gooseberry Creek water users.

Dale Hepworth, with Utah Division of Wildlife Resources, stated that the division supports this project inasmuch as it can be accomplished under the legal process.

Richard Waddingham, representing the DMADC companies and Piute Reservoir and Irrigation Company, stated that if the 19.2 acre-feet of this storage right is totally consumed, return flow to other lower users would be diminished and their vested and decreed rights would be adversely affected and impaired.

John Kirkham, representing Gooseberry Irrigation Company, stated that the period of storage is of critical concern, that direct flow rights must be satisfied based on priority before any storage is made, and that any change in reservoir capacity would require a new appropriation which the State Engineer would have to deny. Mr. Kirkham also expressed concern that these water rights have been lost from nonuse.

M'Recia Elfervig stated that she is a water user in the Gooseberry Irrigation Company and that the Forest Service has and would hold water that should be the



MEMORANDUM DECISION  
CHANGE APPLICATION NUMBER  
63-35 (a17967)  
PAGE -2-

irrigation company's.

It is the opinion of the State Engineer that ownership of decreed Water Right Number 63-35 entitles the applicants to divert and use water; consequently, the applicants meets the criteria of Section 73-3-3, Utah Code, which allows "any person entitled to the use of water" to file a change application. The applicants should be able to utilize the 19.2 acre-feet of water that was actually available for irrigation heretofore. This 19.2 acre-feet of water is the extent of the amount of water considered by the State Engineer under this application.

The applicants are proposing to divert the amount of water that would have been available at the five reservoirs described under ownership of Water Right Number 63-35. Hamilton Reservoir is not mentioned in the Sevier River Decree. This water was historically used for irrigation purposes. Under historic flood irrigation practice, an estimated 50 percent of the water diverted or 9.6 acre-feet would have been consumptively used. In evaluating the proposed uses of the applicant, water that will be consumptively used will be water lost due to evaporation. Once Farnsworth Reservoir is at capacity (232.5 acre-feet), it is estimated that 46.32 acre-feet will evaporated annually from its surface. Historically, 10.97 acre-feet was evaporated, leaving a difference of 35.35 acre-feet to be addressed under this right; Since 9.6 acre-feet is available hereunder, 25.75 acre-feet must be handled under Right Number 63-3204. The remaining 9.6 acre-feet under this right must flow through the reservoir and be available to downstream users to keep the return flow pattern in balance.

To compute the evaporation loss, the following information was used. Farnsworth Reservoir at capacity has a surface area of 25.27 acres. The year-round evaporation rate is 22 inches (1.833 feet). Multiplying 25.27 acres by 1.833 feet equals 46.32 acre-feet of loss. Farnsworth Reservoir previously had a surface area of 19.87 acres, and storage was held from June 1st to August 1st. The reservoir was empty as of August 31st. Averaging the month of August, the total period would equal 76.5 days. The evaporation rate from April one to October 31 (214) days is 18.53 inches. Pro-rating to cover the lower storage period, the rate would equal 6.62 inches (0.552 foot). Multiplying 19.87 acres by 0.552 foot equals 10.97 acre-feet of loss.

Because the applicants will not increase the proposed consumptive use of water over historic uses if certain conditions are imposed, it is the opinion of the State Engineer that this change application can be approved without impairing existing rights.

It is, therefore, **ORDERED** and Change Application Number 63-35 (a17967) is hereby **APPROVED** subject to all prior rights and the following conditions:

1. The applicants' period of accumulating storage water under this right shall be limited to December 1 through March 1. The diversion amount shall not exceed 19.2 acre-feet. Until the reservoir is full, 50 percent of the new water stored from December 1 through March 1 will have to be released to downstream users as directed by the State Engineer to compensate for historic return flow from this right. This diversion shall be metered to determine the amount of water diverted annually from Hamilton Spring, and the diversion must end after March 1 of each year. During the storage period when the reservoir is full, the water will pass through the reservoir and go downstream to satisfy the rights of

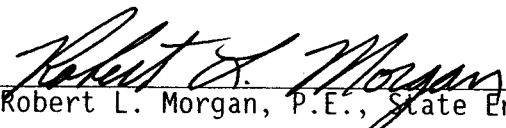
**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
**63-35 (a17967)**  
**PAGE -3-**

downstream users. The only losses to the system then would be for evaporation losses from the reservoir surface and are covered by the applicants' right to deplete water from the system.

2. During the time period of March 2 to November 30, the accumulation of storage is not allowed under this right, and all water entering the reservoir must be released to downstream users. Adequate measuring devices must be installed to the satisfaction of the State Engineer to verify that water is not being stored.
3. The applicants shall install a permanent staff gauge on Farnsworth Dam and shall provide the State Engineer an accurate area capacity curve for the reservoir. The applicants shall report to the State Engineer the elevation of the water surface in the reservoir as of April one and October 15 of each year and at other times as directed by the State Engineer as required for the distribution and regulation of water under this change application. This information shall be supplied to the State Engineer within 10 days of the indicated dates.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 3rd day of March, 1995.

  
Robert L. Morgan, P.E., State Engineer

RLM:KF:mw

Mailed a copy of the foregoing Memorandum Decision this 3rd day of March, 1995, to:

USA Forest Service  
115 East 900 North  
Richfield, UT 84701

Division of Water Rights  
Dam Safety Section

Division of Water Rights  
Distribution Section

Division of Water Rights  
Richfield Office

**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
**63-35 (a17967)**  
**PAGE -4-**

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**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
**63-35 (a17967)**  
**PAGE -5-**

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BY:



Maclovio White, Secretary